IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4487 OF 2007

Sadanand Palkar ....Petitioner
V/s
Municipal Corpn. of Gr. Mumbai ....Respondent.

WITH

WRIT PETITION NO. 4531 OF 2007

Dattaram Babaji Kanal.... .... Petitioner.

V/s

Municipal Corpn. of Gr. Mumbai.... ... Respondent.

WITH

WRIT PETITION NO. 4535 OF 2007

Manohar Bhikaji Tawade..... .... Petitioner.

V/s

Municipal Corpn. of Gr. Mumbai.... ... Respondent.

WITH

WRIT PETITION NO. 4536 OF 2007

Shankar Hari More .... Petitioner.

V/s

Municipal Corpn. of Gr. Mumbai.... ... Respondent.

WITH

WRIT PETITION NO. 4537 OF 2007

Prakash Harichandra Thakur..... .... Petitioner.

V/s

Municipal Corpn. of Gr. Mumbai.... ... Respondent.

WITH

WRIT PETITION NO. 4543 OF 2007

Ajit Manohar Tawde .... Petitioner.

V/s

Municipal Corpn. of Gr. Mumbai.... ... Respondent.

WITH

WRIT PETITION NO. 4544 OF 2007

Smt.Sulochana Sridhar Jethe .... Petitioner.

V/s

Municipal Corpn. of Gr. Mumbai.... ... Respondent.

WITH

WRIT PETITION NO. 4545 OF 2007

Suryakant Sitaram More..... .... Petitioner.

V/s

Municipal Corpn. of Gr. Mumbai.... ... Respondent.

WITH

WRIT PETITION NO. 4546 OF 2007

Anant Krishan Harer..... .... Petitioner.

V/s

Municipal Corpn. of Gr. Mumbai.... ... Respondent.

WITH

WRIT PETITION NO. 4547 OF 2007

Manohar Shankar Jadhav... .... Petitioner.

V/s

Municipal Corpn. of Gr. Mumbai.... ... Respondent.

WITH

WRIT PETITION NO. 4548 OF 2007

Smt.Sharda Sridhar Kolambekar .... Petitioner.

V/s

Municipal Corpn. of Gr. Mumbai.... ... Respondent.

WITH

WRIT PETITION NO. 4549 OF 2007

Smt.Taramati Digambar Mane .... Petitioner.

V/s

Municipal Corpn. of Gr. Mumbai.... ... Respondent.

WITH

WRIT PETITION NO. 4550 OF 2007

Suresh Vithal Sawant .... Petitioner.

V/s

Municipal Corpn. of Gr. Mumbai.... ... Respondent.

WITH

WRIT PETITION NO. 4551 OF 2007

Smt.Sunanda Shantaram Rane .... Petitioner.

V/s

Municipal Corpn. of Gr. Mumbai.... ... Respondent.

WITH

WRIT PETITION NO. 4552 OF 2007

Anant Laxman Botke .... Petitioner.

V/s

Municipal Corpn. of Gr. Mumbai.... ... Respondent.

WITH

WRIT PETITION NO. 4553 OF 2007

Manohar Dattatray Mane..... .... Petitioner.

V/s

Municipal Corpn. of Gr. Mumbai.... ... Respondent.

WITH

WRIT PETITION NO. 4554 OF 2007

Mrs.Vaishali Vijay Sawant .. .. Petitioner.

V/s

Municipal Corpn. of Gr. Mumbai.... ... Respondent.

WITH

WRIT PETITION NO. 4799 OF 2007

Ramesh Mahadev Kudtadkar .... Petitioner.

V/s

Municipal Corpn. of Gr. Mumbai.... ... Respondent.

Mr.K.K.Jadhav, Adv. For the petitioners.

Mr.A.Y.Sakhare, Sr. Adv. With Mr.A.J.Bhor, Adv. For the respondent.

CORAM: A.P.DESHPANDE, J.

12/10/07

PC:

The Municipal Corporation of Greater Bombay owns about 100 structures known as “Bhoiwada Gaon”. The said structures accommodate 727 residential tenements, 46 commercial tenements and 7 residential-cum-commercial tenements. The said structures

are very old and most of them are in dilapidated condition as the structures are said to have been constructed prior to the year 1940. The Corporation proposed redevelopment of "Bhoiwada Gaon" under the Urban Renewal Scheme contemplated under 39(9) of Development Control Rules, 1991. The scheme postulates redevelopment of the entire area with a provision to accommodate the tenants/occupants of the affected area. The scheme also permits sale of some developed property to outsiders. Under the scheme the property to be redeveloped need to provide civil amenities.

2. The Corporation invited tenders for the development of the area and selected a builder/developer and entered into an agreement with the said developer. The Improvement Committee of the Corporation has accorded its approval to the proposal. A cooperative housing society of the majority of tenants/occupants also came to be registered. The corporation entered into an agreement with the developer granting development rights. The developer, the Corporation and the cooperative housing society formed by the tenants/occupants have entered into a tripartite agreement for development of the property. Most of the tenants/occupants have willingly joined in the said scheme of redevelopment barring the present petitioners. These 18 petitioners have refused to join the redevelopment scheme and thus the Corporation was constrained to initiate eviction proceedings under section 105-B of the Bombay Municipal Corporation Act (the "Act"). Aggrieved by the order passed by the

Inquiry Officer appointed for the purpose of conducting inquiry under section 105B of the Act directing eviction of the petitioners from the disputed premises, the petitioners preferred appeals before the City Civil & Sessions Court for Greater Bombay. The Principal Judge of the City Civil Court dismissed the appeals and aggrieved thereby present writ petitions are filed.

3. Section 105-B(1) (c) reads as under :

"**105-B. Power to evict person from corporation premises.**__(1) Where the Commissioner is satisfied---

(a) ....

(b) ....

(c) that any corporation premises in the occupation of any person are required by the corporation in the public interest,

the Commissioner may notwithstanding anything contained in any law for the time being in force, by notice (served by post, or by affixing a copy of it on the outer door or some other conspicuous part of such premises, or in such other manner as may be provided for by regulations), order that that person, as well as any other person who may be in occupation of the whole or any part of the premises, shall vacate them within one month of the date of the service of the notice."

Sub-section (2) then provides that:

"(2) Before an order, under sub-section (1) is made against any person, the Commissioner shall issue, in the

manner hereinafter provided, a notice in writing calling upon all persons concerned to show cause why an order of eviction should not be made."

It is also the requirement of the section that the notice shall specify the ground on which the order of eviction is proposed to be made, and require all persons concerned to show cause against the proposed order on or before the date specified in the notice. The occupant of the premises is also entitled to appear before the Commissioner through an advocate, attorney or pleader. Sub-section 3 postulates that if any person refuses or fails to comply with the order made under sub-section 1 the Commissioner may evict that person and take possession of the premises. For the purpose of adjudicating the issue arising in these petitions the other sub-sections re are not relevant. After show cause notice was served on the present petitioners they have filed their reply with a view to show cause as to why the petitioners should not be evicted. The petitioners have opposed the proposed eviction by raising following contentions:

(i) That in the year 1991-92 some other tenants were shifted to a transit camp and though considerable period has lapsed they have yet not been provided accommodation. Thus the apprehension of the appellants is that they would face same hardship in the absence of a definite assurance from the Corporation in relation to the time within which the petitioners would be allotted the redeveloped tenements;

(ii) That the petitioners were not supplied with all the documents

in regard to redevelopment so also the agreement entered into by the Corporation with the developer or the tripartite agreement. It is also contended that the transit accommodation proposed to be made available to the petitioners is not at a suitable location and does not have proper amenities.

(iii) It is then submitted that that some of the tenants are allotted two transit accommodations whereas the petitioners would be granted one transit accommodation. A further grievance is made that the area which will be allotted would be lesser than what is occupied by the petitioners presently.

4. It is interesting to note that the learned counsel for the petitioners have submitted that the petitioners are not against the redevelopment scheme as such but subject to redressal of their grievances set out herein above in regard to the transit camp, proper assurances from the Corporation, in regard to time span within which new tenements would be reallotted etc., petitioners can consider the option of joining in the redevelopment scheme. Truly speaking when the Corporation issues show cause notice under section 105-B(1)(c) the permissible plea for an occupant or tenant could be that the requirement of the Corporation is not in public interest or is not bonafide. Other issues that are sought to be raised by the petitioners, fall outside the scope of inquiry contemplated under sub-section (2) of section 105B. The learned counsel for the Corporation has submitted that the allotment of the new tenements so also the area to be handed over after

redevelopment is regulated by rules and all those persons who vacate the tenements would be entitled to be inducted as tenants in the redeveloped property in accordance with the rules. It is then submitted that the transit accommodation is very near to "Bhoiwada Gaon" and the distance is hardly of 1 and 1 ½ kilometers. It is stated that walking distance is about 15 minutes away. The learned counsel for the Corporation has submitted that barring the present petitioners most of the occupants/tenants have vacated the premises and because of the filing of appeals and present petitions the implementation of redevelopment scheme is obstructed not only causing inconvenience to the Corporation but undue hardship and inconvenience to other occupants who have willingly joined in the redevelopment scheme and who have vacated the premises. My attention is invited to the administrative guidelines for the implementation of the Urban Renewal Scheme under regulation 33(9) of the Development Control Rules and to be precise, clause 13 which deals with action to be taken against non-participants. Under the said provision occupants who do not willingly join the project the following steps are required to be taken:

"13. <u>ACTION AGAINST ELIGIBLE NON-PARTICIPANTS:</u>

(i) Provision for all of them shall be made in the rehabilitation component of the scheme.

(ii) The details of the actual tenement that would be given to them by way of allotment by drawing lots for them on the same basis as for those who have joined the Project

will be duly communicated to them by MCGM.

(iii) The transit tenements that may be allotted to them would also be indicated along with those who have joined the project.

(iv) If they do not join the scheme within 15 days after the approval has been given to the urban renewal scheme on that site, then action under BMC Act, 1888 amended from time to time shall be taken and their structures will be removed and it shall be ensured that no obstruction is caused to the scheme of the majority of persons who have joined the scheme willingly.

(v) After this action under the foregoing clause is initiated, they will not be eligible to transit tenement along with the others and further they will not be eligible for the reconstructed tenements by lots, but they will still be entitled only to what is available after others have chosen, which may be on the same or some other site.

(vi) If they do not join till the building permission to the Project is given, they will completely lose the right to any built up tenement and their tenement shall be taken over by MCGM and used as accommodation for project affected persons.

(vii) A pitch of about 3 m x 3.5 m may be given if and when available, and construction therein will have to be done on their own."

It will thus be seen that those who did not join the scheme loose

their valuable rights. The occupants will not be entitled to transit tenement along with others and further they will not be eligible for the reconstructed tenements by lots, but they will still be entitled to only what is available after others have chosen which may be on the same or some other site. If the occupants do not join till the building permission of the project is given, they totally loose the right to any built up tenements and their tenement shall be taken over by the MCGM and used as accommodation for project affected persons.

5. Learned senior counsel Shri Sakhare, appearing for the Corporation has in all fairness submitted that even if the petitioners show their readiness and willingness now to join the redevelopment project they will be treated at par with other occupants/tenants who have joined the project willingly and vacated the premises. With a view to enable the petitioners to consider the said offer I had adjourned the matter. Learned counsel for the petitioners conveyed that the petitioners are not ready and willing to join in the project. In view of the refusal by the petitioners to positively respond to the offer made by the Corporation, when the petitioners were being heard, the learned counsel for the respondent-corporation submitted that he be permitted to withdraw the offer and the writ petitions be decided on merit. As the petitioners have not positively responded to the offer made by the Corporation to treat the present petitioners at par with other tenants who have already willingly joined the scheme and vacated earlier, I have no option but to permit the

Corporation to withdraw the offer and I proceed to decide writ petitions on merits. The petitioners have not challenged the bonafides on the part of Corporation in implementing redevelopment scheme nor is it seriously challenged that the purpose is not a public purpose or that redevelopment is not in public interest. It is thus clear that all the objections raised by the petitioners fall outside the scope of inquiry under section 105-B(2) of the act and thus could not have been considered by the inquiry officer or the Principal Judge of the City Civil Court. The transit accommodation at nearby place has been provided. The allotment of tenement after redevelopment is regulated by rules and regulations. The petitioners cannot insist as to what amenities need to be provided at the transit accommodation. Once it is found that redevelopment of the property is in public interest then the order of eviction cannot be interfered with. As the petitioners have not challenged that the redevelopment is not in public interest no other objection can vitiate the eviction order. Perusal of the appellate order reveals that at no stage the legality of the eviction notice has been challenged. The order categorically records that :

> "They are not even challenging the Corporation's case that the premises are required in public interest. Their grievance is mainly in respect of so called defective documentation, agreements, etc. and lack of proper assurance coming from the Corporation. They are skeptical about the faithful implementation of the scheme."

The action on the part of the inquiry officer to issue eviction order cannot be challenged on the grounds sought to be raised by the petitioners. Few tenants/occupants cannot be permitted to defeat the redevelopment scheme wherein almost all the tenants have willingly joined the project and vacated the premises. In the first place I hold that there is no merit in writ petitions and the same thus deserve to be dismissed summarily. I also refuse to exercise discretion in favour of the present petitioners by entertaining these petitions as the same would not be just and equitable having regard to interest of other occupants/tenants who have vacated the premises or who would be soon vacating the premises. In the result writ petitions are summarily dismissed.

12.10.07